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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,223	10/22/2001	Gerhard Mueller	30051/37886	4981

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EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 06/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/986,223

Applicant(s)

MUELLER ET AL.

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 March 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7,9-11,13-19,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-11,13-19,21 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3-16-04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **Detailed Action**

### *Amendment*

1. This office action is in response to applicant's amendment dated 3-16-04 and this action is final.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 3/1, 3/2 4-5, 10-11, 13-14, 16-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,766,713 to Evans in view of U.S. Patent No. 5,147,239 to Staudenrausch or U.S. Patent No. 5,885,150 to Whittlesey.

Referring to claims 1 and 10, Evans discloses a sausage-producing device comprising in combination a stuffing unit – see column 5 lines 29-31, with a charging pipe – at 22 and 30 for stuffing sausage skins, a length-dimensioning unit – at 26 for controlled removal of the stuffed sausage skins, and a clip module – the device as seen in figure 2 which supports and powers the clippers – 33 and 35, for closing the stuffed sausage skins arranged directly after the length-dimensioning unit – 26 when seen in the direction of transport of the stuffed sausage skins, and

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wherein a control means – see for example column 5 lines 51-61, is provided to synchronize the functions of the stuffing unit, clip and the length dimensioning unit – see for example figures 1-14 and columns 1-12. Evans does not disclose the length-dimensioning unit having two conveyor belts, the distance and speed of the belts being adjustable to form a specific sausage shape and length with all of the sausages having the same shape and volume, wherein by adjusting the removal rate of the length-dimensioning unit during sausage stuffing, relative to the stuffing material ejection rate, the length of the individual sausages can be determined. Staudenrausch and Whittlesey do disclose the length dimensioning unit having two conveyor belts – at 8 of Staudenrausch and – at 24,26 of Whittlesey, the distance and speed of the belts being adjustable to form a specific sausage shape and length with all of the sausages having the same shape and volume, wherein by adjusting the removal rate of the length-dimensioning unit during sausage stuffing, relative to the stuffing material ejection rate, the length of the individual sausages can be determined – see for example columns 2-3 of Staudenrausch and columns 2-5 of Whittlesey. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Evans and add the two conveyor belt length dimensioning unit of Staudenrausch or Whittlesey, so as to allow for an automatic control of the size of the sausage.

Referring to claims 2 and 11, Evans as modified by Staudenrausch and Whittlesey further discloses the charging pipe has associated therewith a twist-off unit – see for example at 2-4 of Staudenrausch and column 2 of Whittlesey.

Referring to claims 3/1 and 3/2, Evans further discloses the clip module includes a cutter – see for example column 6 lines 5-10.

Referring to claim 4, Evans further discloses the clip module includes a loop former – 48.

Referring to claim 5, Evans further discloses when seen in the direction of transport of the stuffed sausage skins, the clip module is followed by a transfer unit – 56.

Referring to claim 13, Evans further discloses closing the stuffed sausage skins with the clip module at two juxtaposed points – see for example figure 2 and columns 5-13.

Referring to claim 14, Evans further discloses cutting through the stuffed sausage skins with the clip module between the two points – see for example figure 2 and columns 5-13.

Referring to claim 16, Evans further discloses closing the stuffed sausage skins by the clip module twice at the twist-off point – see for example figure 2 and columns 5-13.

Referring to claim 17, Evans further discloses advancing the stuffed sausage skins, which have been closed by the clip module to a transfer unit – at 56.

Referring to claim 19, Evans further discloses causing the functions of the clip module to take place in synchronism with the functions of the length-dimensioning unit and the transfer unit – see for example column 5 lines 51-61.

Claims 6-7, 9, 18 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans as applied to claims 1, 5, 10 and 17 above, and further in view of U.S. Patent No. 5,699,723 to Schliesser et al.

Referring to claims 6 and 18, Evans as modified by Staudenrausch or Whittlesey does not disclose when seen in the direction of transport of the stuffed sausage skins, the transfer unit is followed by a conveyor belt. Schliesser et al. does disclose when seen in the direction of transport of the stuffed sausage skins, the transfer unit – 7-8 is followed by a conveyor belt – 14 – see for example figure 1 and column 2. Therefore it would have been obvious to one of ordinary skill in the art to take the sausage producing apparatus or method of Evans as modified

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by Staudenrausch or Whittlesey and add the conveyor belt following the transfer unit of Schliesser et al., so as to allow for the sausage skins to be easily and automatically transported for further processing.

Referring to claims 7 and 22, Evans as modified by Staudenrausch or Whittlesey does not disclose when seen in the direction of transport of the stuffed sausage skins, the transfer unit is followed by a suspension unit. Schliesser et al. does disclose when seen in the direction of transport of the stuffed sausage skins, the transfer unit – 7-8 is followed by a suspension unit – 6 – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the sausage producing device or method of Evans as modified by Staudenrausch or Whittlesey and add the suspension unit following the transfer unit of Schliesser et al., so as to allow for the sausage skins to be easily and automatically transported at a height easily accessed by the user for further processing.

Referring to claim 9, Evans as modified by Staudenrausch or Whittlesey further discloses the transfer unit – 56 is connected to the control means for the sausage-producing device via control lines so as to synchronize the functions of the transfer unit with the functions of the stuffing unit, the length-dimensioning unit and the clip module – see for example columns 1-13. Evans does not disclose the conveyor belt is connected to the control means for synchronization with the stuffing unit, length-dimensioning unit and the clip module. Schliesser et al. does disclose the conveyor belt – 14 is connected to the controls – see for example columns 1-3 and it is inherent that the conveyor belt moves in synchronization with the stuffing unit, length dimensioning unit and the clip module since it is connected to these devices and is used to transport the sausages in relation to these devices. Therefore it would have been obvious to one

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of ordinary skill in the art to take the sausage producing device of Evans as modified by Staudenrausch or Whittlesey and add the conveyor belt connected to the controls for synchronization with the other components of the device of Schliesser et al., so as to make the device operate as quickly and efficiently as possible thus allowing a higher number of sausages to be produced in a shorter amount of time.

Referring to claim 21, Evans as modified by Staudenrausch or Whittlesey further discloses the transfer unit – 56 is connected to the control means for the sausage-producing device via control lines so as to synchronize the functions of the transfer unit with the functions of the stuffing unit, the length-dimensioning unit and the clip module – see for example columns 1-13 of Evans. Evans as modified by Staudenrausch or Whittlesey does not disclose the suspension unit is connected to the control means for synchronization with the stuffing unit, length-dimensioning unit and the clip module. Schliesser et al. does disclose the suspension unit – at 6 is connected to the controls – see for example columns 1-3 and it is inherent that the conveyor belt moves in synchronization with the stuffing unit, length dimensioning unit and the clip module since it is connected to these devices and is used to transport the sausages in relation to these devices. Therefore it would have been obvious to one of ordinary skill in the art to take the sausage producing device of Evans as modified by Staudenrausch or Whittlesey and add the suspension unit connected to the controls for synchronization with the other components of the device of Schliesser et al., so as to make the device operate as quickly and efficiently as possible thus allowing a higher number of sausages to be produced in a shorter amount of time.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evans as modified by Staudenrausch or Whittlesey as applied to claim 14 above, and further in view of U.S. Patent No. 6,080,054 to Muller et al.

Referring to claim 15, Evans as modified by Staudenrausch or Whittlesey further discloses the step of cutting through is effected after each first closure, so as to obtain a single sausage – see for example figures 1 of Evans, Staudenrausch and figures 2-3 of Whittlesey. Evans as modified by Staudenrausch or Whittlesey does not disclose the step of cutting through is effected after each n-th closure wherein n is a selected integer, so as to obtain chains of sausages, which comprise a specific number of sausages corresponding to the selected integer n. Muller et al. does disclose the step of cutting through is effected after each n-th closure so as to obtain chains of sausages which comprise a specific number of sausages – see for example figures 1-8 and columns 1-8. Therefore it would have been obvious to one of ordinary skill in the art to take the method of producing sausages of Evans as modified by Staudenrausch or Whittlesey and add the step of cutting after each n-th closure of Muller et al., so as to make the device adjustable and adaptable for many different

### ***Response to Arguments***

3. Regarding claim 1 using the Evans reference US 4766713 in view of the Staudenrausch reference US 5147239, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of



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ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Regarding claim 1 using the Evans reference in view of the Whittlesey reference US 5885150, the Whittlesey reference discloses shaping the casing filled with meat product via conveyor belts and therefore teaches the adjustable conveyors used to shape the meat product. Further, the control means to synchronize the stuffing unit, clip module and the length dimensioning unit is shown as being taught by the Evans reference and not the Whittlesey reference as seen in paragraph 2 above and the previous office action dated 12-2-03.

Regarding claim 15, in response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Parsley  
Patent Examiner  
Art Unit 3643



PETER M. POON  
SUPERVISORY PATENT EXAMINER

6/1/04